

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3833 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NAVAJKHAN AMINKHAN PATHAN

Versus

DIVISIONAL CONTROLLER

Appearance:

MR HK RATHOD for Petitioner
SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 11/12/96

ORAL JUDGEMENT

1. Heard the learned counsel for the petitioner.
The petitioner who was employed as a Conductor with the respondent Gujarat State Road Transport Corporation. His services were terminated as a result of disciplinary proceedings in which he was found guilty of misconduct of wrong punching of tickets and improper issue of tickets in 1978. The Tribunal while holding the charge that

there were irregularities in punching and issuing tickets found that one cannot say that the concerned workman being a conductor has shown dishonesty with the Corporation's money or property. On reaching this conclusion it found that a lenient view ought to be taken on the aforesaid finding, the Tribunal exercised its power under Section 11A while making the award on 17.4.1984 after about lapse of six years of the dismissal order in stead of upholding the punishment of reinstatement directed to impose punishment of reinstating the workman on lower post, in another cadre. In view of finding of misconduct against the petitioner, no backwages were awarded. The petitioner challenges the award to the extent it denies backwages and to the extent respondents have treated the award of reinstatement in lower cadre as a direction to give fresh appointment by denying him the continuity of service keeping in view the past services.

2. No one appeared in spite of service on behalf of the respondents. In the face of the finding, about non-existence of any dishonesty on the part of the delinquent, the denial of full backwages for the intervening period from the date of termination to the reinstatement in the lower cadre appears to be grossly harsh and disproportionate to misconduct proved which is apparently unjust and unreasonable so as to warrant interference under Article 226 as it affects the right of equality under Article 14 guaranteed to the citizen which includes the right to be treated justly and fairly and not to be dealt with unreasonably and arbitrarily at the hands of the State. Once the Tribunal had come to the conclusion that the misconduct proved is not related to any dishonest intention or causing loss to the Corporation in any manner, the punishment of reducing in the rank with denial of full backwages on the face of it looks grossly disproportionate to the misconduct proved which would not satisfy test of reasonableness by any standard. To that extent the order suffers from error apparent on the face of it and requires modification.

3. So far as the second grievance of the petitioner about denying the petitioner benefit of continuity of service is concerned, it needs to be clarified that the Tribunal has not made any order denying the continuity of service nor it has made an order that the absence from duty after termination for intervening period should be treated as a break in service. Once the petitioner has been reinstated, the intervening period from the date of termination to the date of actual reinstatement cannot be treated as a break in service, nor additional punishment

of break in service could be considered part of denial of backwages. It is like if the order would have originally been made for reduction in rank, then it could not have resulted in denying continuity of service resulting in loss of benefit of the service rendered by the petitioner for future. Therefore to the extent the respondents have issued an appointment in favour of the petitioner by treating it to be fresh appointment breaking link with the past is concerned, is not justified. Obviously fresh order will have to be made for giving effect to the direction of the Tribunal for reinstating and the petitioner in any lower cadre than the cadre of Conductor but that was as a result of reinstatement and not by way of fresh appointment on account of substitution of one penalty by another. Penalty will have to be related to a person in service. It cannot be related to a person who is out of service.

4. In the facts and circumstances of the case, this petition is allowed in part. In stead of denying full backwages, it is directed that the petitioner shall be entitled to 50% of the backwages, as a result of reinstatement for the intervening period between the date of termination and the date of reinstatement in the lower cadre than the Conductor, and the reinstatement in the lower cadre be treated as punishment by reduction in rank, and not a fresh appointment. Rule made absolute with no order as to costs.